

In re Appln. of Kovesdi et al.
Application No. 09/599,997

and (ii) there must be a serious burden on the Examiner if restriction is not required. Both of these criteria must exist for a restriction requirement to be proper, and "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, *even though it includes claims to distinct or independent inventions*" (M.P.E.P. § 803, emphasis added).

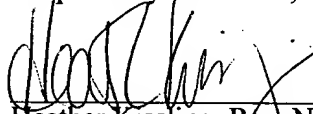
In the case at hand, the Office fails to meet the above-identified criteria and to present the required supporting evidence and reasoning. The Office has not even so much as alleged that there would be a serious burden on the Examiner if restriction were not required. In fact, the Office has indicated that all of the subject matter of the pending claims is classified in the same class and subclass. In as much as the subject matter of the pending claims is searchable in the same class and subclass, there can be no "serious burden" on the Examiner in the absence of a restriction requirement. Indeed, the Office has failed to show separate classification, separate status in the art when classifiable together, or a different field of search with respect to the subject matter of the pending claims. Thus, the Office has failed to meet the criterion for a proper requirement for restriction.

In view of the above, Applicants submit that the requirement for restriction is improper and should be withdrawn. Applicants acknowledge the requirement to delete reference to non-elected subject matter. In the event that the restriction requirement is made final, Applicants will thereafter amend the claims to delete reference to the non-elected subject matter.

Conclusion

For the above reasons, the Office has failed to satisfy the requirements for a proper restriction requirement, and Applicants request withdrawal of the restriction requirement. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

Respectfully submitted,



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Date: October 26, 2001

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CERTIFICATE OF MAILING



JAN 2 4 2002

TECH CENTER 1600/290

I hereby certify that this RESPONSE TO RESTRICTION REQUIREMENT (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.

Date: October 26, 2001

Frances Andez

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